

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)
OF DELMARVA POWER & LIGHT COMPANY,)
EXELON CORPORATION,)
PEPCO HOLDINGS, INC., PURPLE)
ACQUISITION CORPORATION, EXELON) PSC DOCKET NO. 14-193
ENERGY DELIVERY COMPANY, LLC AND)
NEW SPECIAL PURPOSE ENTITY FOR)
APPROVALS UNDER THE PROVISIONS OF)
26 DEL. C. §§ 215 and 1016)
(Filed June 18, 2014))

ORDER NO. 8746

AND NOW, this 2nd day of June, 2015, the Delaware Public Service Commission (the "Commission") determines and orders the following:

1. On June 18, 2014, Delmarva Power & Light Company ("Delmarva"), Exelon Corporation ("Exelon"), Pepco Holdings, Inc. ("PHI"), Purple Acquisition Company ("Merger Sub"), Exelon Energy Delivery Company, LLC and Special Purpose Entity, LLC (collectively the "Joint Applicants") filed an application ("Application") seeking approvals under 26 Del. C. §§215 and 1016 for a change of control of Delmarva to be effected by a merger of PHI with Merger Sub, a wholly-owned subsidiary of Exelon (the "Merger").

2. The Joint Applicants also filed applications with the Federal Energy Regulatory Commission ("FERC"), the State of New Jersey, the State of Maryland, the State of Virginia and the District of Columbia seeking approval of the Merger from those jurisdictions.

3. In Order No. 8281 (July 8, 2014), we opened this docket to consider the Application and established a procedural schedule pursuant to which we would conduct evidentiary hearings on the

Application on December 16-17, 2014, and would issue a final order on or before January 6, 2015. The schedule was amended to reschedule the evidentiary hearings for February 18-20, 2015, with a final order due on or before March 3, 2015.

4. The Division of the Public Advocate ("DPA") exercised its statutory right to intervene, and the designated Hearing Examiner granted intervenor status to the Delaware Department of Natural Resources and Environmental Control ("DNREC"), the Mid-Atlantic Renewable Energy Coalition ("MAREC"), the Delaware Sustainable Energy Utility ("SEU"), NRG Energy, Inc., Partners for a Sustainable Delaware, Chesapeake Utilities Corporation, Monitoring Analytics, Inc., the Independent Market Monitor for PJM Interconnection, LLC ("IMM"), the Clean Air Council ("CAC"), and Dr. Jeremy Firestone. We denied an untimely intervention request from Local Union 614 of the International Brotherhood of Electrical Workers.

5. On November 20, 2014, FERC issued an order approving the Merger.

6. On March 6, 2015, the New Jersey Board of Public Utilities ("NJ BPU") issued an order approving the Merger as modified by the terms of a settlement entered into by the Joint Applicants, the NJ BPU Staff, and the Independent Energy Producers of New Jersey.

7. On February 13, 2015, the Joint Applicants filed a motion to amend the scheduling order. They represented that they had reached a settlement agreement with the Commission Staff ("Staff"), the DPA, MAREC, the SEU, DNREC and the CAC (collectively the "Settling Parties"), and requested the Commission to reschedule the evidentiary

hearing to April 21, 2015 and the deadline for a final order to May 5, 2015. Dr. Firestone opposed the motion in part because he was unavailable on April 21, 2015, and sought to extend the evidentiary hearing to a date after June 16, 2015. We considered the Joint Applicants' motion and Dr. Firestone's objection at a duly-noticed meeting on February 18, 2015 (the date the evidentiary hearings were scheduled to begin). We adjourned the hearing and instructed the parties to confer to determine whether they could reach a mutually-acceptable agreement on the requested extension. As a result of the parties' discussions, we agreed to reschedule the evidentiary hearing to April 7, 2015 and our deliberations to April 19, 2015. See Order No. 8718 (March 3, 2015).

8. On April 1, 2015, the Joint Applicants, DPA and MAREC filed pre-hearing briefs supporting the proposed settlement, and the IMM and Dr. Firestone filed pre-hearing briefs opposing the proposed settlement. In his prehearing brief, Dr. Firestone claimed that he was denied due process as a result of what he called unfair discovery rulings and bias. (Firestone Pre-hearing Brief at 40-46).

9. On April 7, 2015, prior to the commencement of the duly-noticed evidentiary hearing, the Settling Parties presented us with an amended settlement agreement ("Amended Settlement Agreement"). The Amended Settlement Agreement contained modifications from the initial settlement agreement that were negotiated between Dr. Firestone and the Settling Parties. We then conducted the evidentiary hearing on the proposed Amended Settlement Agreement. The Joint Applicants proffered Darryl M. Bradford, Exelon's General Counsel (4/7/15

Transcript at 546-79); the DPA proffered the Public Advocate, David L. Bonar (*id.* at 580-84), and Glenn A. Watkins, Principal and Senior Economist of Technical Associates, Inc. (*id.* at 585-617); and Staff proffered Senior Regulatory Policy Analyst Connie S. McDowell (*id.* at 617-33). Messrs. Bradford and Watkins and Ms. McDowell testified that the Amended Settlement Agreement was in the public interest and should be approved.¹ Through a prior arrangement, DNREC witness Thomas Noyes, Principal Planner for Utility Policy in DNREC's Division of Energy and Climate, testified by deposition in lieu of testimony at the evidentiary hearing that the settlement was in the public interest and should be approved. (Ex. JF-14 - Transcript of March 25, 2015 Deposition of Thomas Noyes).² The IMM presented Dr. Howard Haas, who testified that the Amended Settlement Agreement should be rejected unless certain conditions that the IMM believed were necessary were included in the settlement. (4/7/15 Transcript at 649-74). Dr. Firestone stated on the record that he did not oppose the Amended Settlement Agreement and that he withdrew the due process claims he had made in his pre-hearing brief. (*Id.* at 647-48).³

10. On April 16, 2015, the Joint Applicants filed another motion to amend the scheduling order. The Joint Applicants advised us that the Maryland Public Service Commission ("Maryland PSC") was scheduled to issue a decision on the application pending before it by

¹Although representatives of MAREC and the SEU attended the evidentiary hearing, they did not present a witness to testify regarding the Amended Settlement Agreement.

²We note that Mr. Noyes was examined regarding the first settlement agreement; however, the minor changes that were made in the Amended Settlement Agreement did not affect DNREC's position.

³The transcript indicates that Dr. Firestone would not "move any flames" that had been set forth in his Pre-hearing brief "forward from this time." 4/7/15 Transcript at 647-48. Obviously the word "flames" is an error in transcription.

May 8, 2015, and pointed out that Mr. Bradford had stated at the evidentiary hearing that the Joint Applicants were willing to postpone this Commission's deliberations to a date after the Maryland PSC decision. The Joint Applicants proposed that we conduct our deliberations on May 19, 2015 and issue a final order on or before June 2, 2015. Staff supported the Joint Applicants' motion; the DPA took no position on it; and no other party commented on the motion. We granted the motion in Order No. 8738 (May 5, 2015).

11. On May 15, 2015, the Maryland PSC issued an order approving the merger with conditions.

12. On May 19, 2015, we met in a duly-noticed public session to conduct our deliberations on the Amended Settlement Agreement and the Merger.⁴ The Joint Applicants advised us that they accepted the Maryland PSC's conditions for approval of the merger. We stated that we would issue a minute order reflecting our deliberations on June 2, 2015, with a further order to be issued after the parties had analyzed and reviewed the additional customer financial benefits and/or other benefits that are the subject of orders in other jurisdictions, as provided for under the Most Favored Nation provisions of the Amended Settlement Agreement. (Ex. JA-50 at ¶¶103-105).

**NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE VOTE OF
CHAIRMAN WINSLOW AND COMMISSIONERS CONAWAY AND GRAY:**

13. The Commission has jurisdiction over this matter pursuant to 26 Del. C. §§ 201 and 512 and 29 Del. C. §10128.

⁴Although five commissioners heard the evidence presented at the April 7 evidentiary hearing, only three commissioners participated in deliberations. This is because then-Commissioners Clark and Lester left the Commission. They have been replaced by Commissioners Karia and Drexler, who did not participate in the deliberations.

14. Based upon the foregoing, we approve the Merger, as amended by the Amended Settlement Agreement (3-0).

15. The Settling Parties and Dr. Firestone are directed to analyze and review additional customer financial benefits or other benefits that are the subject of orders in other jurisdictions and to propose such changes to the provisions of the Amended Settlement Agreement as may be necessary, pursuant to the Most Favored Nation provisions (§§103-105) of the Amended Settlement Agreement. If any Settling Party finds that the amount or form of compensation offered by Exelon pursuant to the Most Favored Nation provisions to be insufficient, then the Settling Party may petition the Commission to require that Exelon provide increased benefits in Delaware.

16. The specific grounds for the Commission's approval of the Merger, as amended by the Amended Settlement Agreement, shall be further detailed in a subsequent order.

17. The Commission reserves jurisdiction to review and decide upon matters arising under the Most Favored Nation provisions set forth in §§103-105 of the Amended Settlement Agreement, as well as to enter any further Orders that may be necessary or proper.

BY ORDER OF THE COMMISSION:

Chair

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary